

referred to the Reporter or not? 3. Whether Their Lordships wish to see the fair copy of the judgement? 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? 5. Whether it is to be circulated to the Civil Judge?

-----CHANDMIYA  
PIRBHAI            SHAIKH            Versus            STATE            OF            GUJARAT  
----- MR  
HR PRAJAPATI FOR M/S THAKKAR ASSOC. for Petitioner MR KC SHAH,  
LD. AGP. for Respondents.  
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CORAM : MR.JUSTICE M.S.PARIKH Date of decision: 14/08/96

#### ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 22/3/1996 rendered by the respondent no.2 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of storing and selling foreign liquor and following prohibition offences have been registered in the Maninagar Police Station against him :-

1) CR No.110/95 U/Ss.66B,65A,E, & 81 of Bombay Prohi. Act read with sec.120(B) of the IPC  
1506 bottles of foreign liquor amounting to

Rs.12,03,820/with cash amount of Rs.38,000/

Maruti Van of Rs.1,70,000/-,  
pending in Court.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of four witnesses have been relied upon. They indicate about two incidents, one occurring on 21/2/1996 and second occurring on 1/3/1996. Both the incidents indicate threatening administered to the concerned witnesses, their beating in the public place and rushing at the people collected at the place either with knife or with razor, as the case may be, leading to the dispersing of the people collected on such occasions.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid case lodged against the petitioner. The petitioner has been stamped as a boot-legger within the meaning of section 2(b) of the PASA Act.

5. I have heard the learned advocate for the petitioner and the Ld. A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh v/s. M.M. Mehta, C.P. ,  
reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras: 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (supra).

6. What has been said by the Apex Court in paras. 11 and 12 of Mustakmiya's case (supra) has been relied upon on behalf of the petitioner; in view of the fact that the petitioner has been acquitted of the offences charged against him in the aforesaid case. The facts with regard to such acquittal appear in para. 4 (r) of the petition which read as under :-

'The petitioner respectfully says that the petitioner was falsely involved in connection with the offence registered at C.R. No. 110/95. That the name of the petitioner was not mentioned in anywhere in the grounds

of detention. That the materials in the form of statements of various persons are relied on by detaining authority for passing the order of detention. That there is no material connecting the petitioner with the alleged offence. That the petitioner, subsequently acquitted by the Metropolitan Magistrate, Ahmedabad vide its judgment and order dated 29/3/1996. That the petitioner and other 14 accused persons were acquitted by the Hon'ble Trial Court.

That the house from which alleged stock of liquor was found out was belonging to one Faridbhai Pirbhai Mansuri who stated before the trial Court that he purchased the said house and given on rent to the petitioner on 12/8/95. That rent note was also executed. However, there was some dispute with respect to rent and the tax of the house and, therefore, the petitioner had not gone to reside in the said house. The only allegation attributed to the petitioner was that the petitioner had given his house for storing the stock of liquor. Under the circumstances, the subjective satisfaction of the detaining authority gets vitiated as the detaining authority has not considered all the materials available to it before passing the order of detention. Therefore, the order of detention is required to be quashed and set aside.'

It has, therefore, been submitted that whereas the continued detention of the petitioner on the basis of the aforesaid case is no more required, even the subjective satisfaction based on the said case would be vitiated in view of Mustakmiya's case (supra) and the decision in Piyush Kantilal Mehta vs. Police Commissioner, reported in 1989 Suppl.(1) SCC 322, where there were two prohibition cases each concerning 21,795 Ml. Ltrs. of foreign liquor and 1,39,750 Ml. Ltrs. of foreign liquor. It is, therefore, submitted that the statements of the witnesses recorded in the present case with regard to two incidents are too general and related to individual incidents affecting law and order situation. In my opinion such statements cannot be said to bring out facts as would affect public order. The incidents are less grave in nature than the incidents quoted in paras. 11 and 12 in Mustakmiya's case, which are reproduced as under :-

'This brings us to the criminal activities of the detenu-petitioner which are said to have taken place on 10/8/1994 at 4.00 p.m. and on 12/8/1994 at 7.00 p.m. In the incident dated 10/8/1994 the petitioner is alleged to have purchased goods worth Rs.500/- from a businessman and on the demand of the price of the goods, the petitioner is alleged to have dragged him out on the

public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. Similarly, it is alleged that on 12/8/1994 at about 7-00 p.m. the detenu-petitioner stopped the witness on the road near the eastern side of Sardar Garden and beat him as the petitioner doubted that he was informing the police about the anti-social activities of the petitioner and his associates.

The petitioner is also alleged to have rushed towards the people gathered there with the revolver. Taking the aforesaid two incidents and the allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. They were incident directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tempo of life or the peace and tranquillity of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. As said earlier, the Act by itself is not determinant of its own gravity but it is the potentiality of the act which matters.

12. The alleged incident dated 12/8/1994 relating to the beating of some person on suspicion that he was informing the police about criminal activities of the petitioner, the allegation is sweeping without any material to support it. Neither any timely report appears to have been made about it to the police nor any offence appearsto have been registered against the detenu-petitioner concerning the said incident. There remains the solitary incident dated 10/8/1994 pertaining to the alleged beating of a businessman which as said earlier directly was against an individual having no adverse impact on public at large. Besides, the solitary incident dated 10/8/1994 alone would not provide a justification to hold that the petitioner was habitually committing or attempting to commit or abetting the commission of offences as contemplated in Sec. 2(c) of the Act because the expression 'habitually' postulates a thread of continuity in the commission of offence repeatedly and persistently. However, in our considered opinion none of the aforementioned two incidents can be said to be incidents affecting public order nor from these stray and casual acts the petitioner can be branded as a dangerous person within the meaning of Sec. 2(c) of the Act, who was habitually engaged in activities adversely affecting or likely to affect adversely the maintenance of public order. Similar is the position

with regard to the recovery of .32 bore country-made revolver from the possession of the petitioner without any permit or licence which is an offence under Sec. 25 of the Arms Act. The said revolver was found to be rusty and had a broken barrel. Mere possession of a firearm without anything more cannot bring a case within the ambit of an act affecting public order as contemplated in Sec. 3 of the Act unless ingredients of Sec. 2(c) of the Act are also made out. From the facts discussed above it turns out that there was no material which may lead to a reasonable and definite conclusion that the detenu-petitioner was habitually engaged in criminal activities and, therefore, a dangerous person. The detaining authority thus passed the impugned order of detention against the petitioner without application of mind on the aforesaid aspects of the case and, therefore, the detention order could not be sustained.'

7. In reply Mr. K.C. Shah, Ld. A.G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi v/s. State of Maharashtra and anr., reported in AIR 1992 SC 979. Comparing the facts of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs. Harpreet Kaur's case (supra) would not be applicable.

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Mustakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :-

9. The impugned order of detention is hereby quashed and set aside. The petitioner-detenu shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

